IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPLICATION NO.1 OF 2000

Jain Irrigation Systems,
Sadhana Rajan House, Dr.D.N.
Road, Fort, Mumbai - 400 001 .. Applicant.

V/s.

Commissioner of Customs,
Nhava Sheva .. Respondent.

Mr.J.M. Patel, Advocate with Mr.A.V. Naik, Advocate for the applicant.

Ms.Neeta Masurkar, Advocate with Mr.Y.S. Bhate, Advocate for the respondent.

**CORAM : V.C. DAGA &**
**J.P. DEVADHAR, JJ.**

**DATED : 17TH AUGUST, 2005.**

**JUDGMENT (Per J.P. Devadhar, J.) :**

1. By this application filed under Section 130A of the Customs Act, 1962, the applicant seeks an order directing the CEGAT to refer to this Court as many as six questions of law arising out of the order of the CEGAT dated October 12, 1999.

2. The basic question raised in this application is, whether in the facts and circumstances of the case, the CEGAT was justified in upholding the Order in Original passed by the Assistant Commissioner of Customs and declining the

request of the applicant to reconvert the already assessed home consumption bill of entry into bond bill of entry under Section 46(5) of the Customs Act, 1962.

3. Sometime in November, 1995 the applicant a 100% export oriented unit (EOU) had imported a consignment of Pipe Head PHPO 40 (hereinafter referred to as 'the imported goods') under Customs Tariff Head 8477.90 as machine part for the production of HDPE and MDPE Pipes and filed a bond bill of entry, claiming that the said capital goods have been imported under 100% EOU scheme and clear the same duty free under Notification No.13/81 dated February 9, 1981 on production of attested list from the Development Commissioner.

4. However, on November 16, 1995 the applicant requested for conversion of the said bond bill of entry into home consumption bill of entry so that on assessment the goods could be cleared on payment of duty. The customs authorities accepted the request of the applicant and permitted conversion of the bond bill of entry into home consumption bill of entry. On November 21, 1995 the said home consumption bill of entry was assessed under CTH 8477.90 with basic customs duty at the rate of 25% and additional duty at the rate of 15%. Thus, on assessment, the

applicant was required to pay duty amounting to Rs.19,35,663/- and clear the goods. Section 47(2) of the Customs Act, 1962 provides that if the importer fails to pay the import duty within seven days from the date on which the bill of entry is returned to them for payment, then the importer shall pay the interest applicable on such duty till the date of payment of said duty. The applicant neither paid the duty within the stipulated time nor cleared the consignment thereafter on payment of duty with interest.

5. After a gap of about two and half years, the applicant by letter dated May 22, 1998 requested for reconversion of the assessed bill of entry into Bond bill of entry with a view to clear the goods under the 100% EOU scheme without payment of duty.

6. By an Order in Original dated November 25, 1998, the Assistant Commissioner of Customs, Jawahar Customs House, Nhava Sheva rejected the request of the applicant to convert the already assessed home consumption bill of entry into bond bill of entry on the ground that by allowing such conversion, the interest of the revenue would be prejudicially affected. On appeal filed by the assessee, the Commissioner of Customs (Appeals) vide order dated February 8, 1999 allowed the appeal on the ground

that the applicant had initially sought clearance of the goods under 100% EOU scheme and it is the policy decision of the Government to allow full exemption of import duty to the goods imported by 100% EOU and, therefore, the applicant is entitled to seek reconversion of home consumption bill of entry into Bond bill of entry. On further appeal filed by the revenue, the CEGAT by its order dated October 12, 1999 reversed the order passed by the Commissioner of Customs (Appeals) and upheld the Order in Original passed by the Assistant Commissioner of Customs declining reconversion of the bill of entry. Hence, the applicant has filed this application under Section 130A of the Customs Act, 1962.

7. Mr.Patel, learned Advocate appearing on behalf of the applicant submitted that admittedly the applicant had imported the goods under 100% EOU scheme and because there was inordinate delay on the part of the office of the Development Commissioner to furnish the list of attested items on the basis of which the goods could be cleared without payment of duty, the applicant had sought conversion of the bond bill of entry into home consumption bill of entry with a view to clear the same on payment of duty. However, due to financial difficulties the applicant could not clear the goods even after the assessment. Ultimately on receiving the list of attested items

from the office of the Development Commissioner, the applicant applied for reconversion of the home consumption bill of entry into bond bill of entry so as to clear the goods under 100% EOU scheme without payment of duty. Mr.Patel further submitted that if the office of the Development Commissioner had issued the attested list in time the goods would have been cleared duty free and for the delay on the part of the Development Commissioner, the applicant could not made to suffer. In other words, according to Mr.Patel, admittedly the goods were imported under 100% EOU scheme so as to obtain clearance without payment of duty and, therefore, by permitting reconversion of the home consumption bill of entry, no prejudice would be caused to the revenue. Mr.Patel further submitted that under Section 46(5) of the Customs Act, the authorities are bound to permit conversion of bill of entry unless it is established that the conversion is sought with fraudulent intention or such conversion would cause loss of revenue. In the present case, neither of the conditions are satisfied and, therefore, the denial of reconversion of bill of entry was wholly erroneous and contrary to law.

8. In our opinion there is no merit in the contentions of the applicant. Admittedly, on the date of import the attested list was not issued by

the Development Commissioner. As a result the goods imported by the applicant could not be cleared duty free under 100% EOU scheme. In anticipation of obtaining the attested list, the applicant filed Bond bill of entry. However, the applicant gave up the claim for duty free clearance under 100% EOU scheme and opted for clearance on payment of duty by seeking conversion of bond bill of entry into home consumption bill of entry. The request of the applicant was accepted and conversion of the bill of entry was permitted. Thereafter, the bill of entry was assessed on November 21, 1995 and the applicant was permitted to clear the goods on payment of duty of Rs.19,35,663/-. Section 47(2) of the Customs Act, 1962 provides that if the assessed goods are not cleared on payment of duty within seven days then the customs duty is payable with interest. Admittedly, the applicant did not clear the goods within seven days of the passing of assessment order. In fact, the applicant did not clear the goods for years together. Ultimately by a letter dated May 22, 1998 the applicant instead of clearing the goods on payment of duty with interest, sought reconversion of the bill of entry. In these circumstances, it cannot be disputed that granting permission for reconversion of the bill of entry would cause revenue loss. The fact that the applicant had imported the goods with a view to avail duty free clearance under 100% EOU

scheme is not material because, admittedly on the date on which the goods were imported there was no attested list permitting such import under 100% EOU scheme and, therefore, on importation, the said goods were liable to be cleared on payment of duty. It is true that if the goods were retained in the bonded warehouse, the applicant on obtaining attested list could have cleared the same duty free under 100% EOU scheme. However, in view of the conscious decision taken by the applicant, the conversion of bill of entry was permitted and the converted bill of entry was assessed to duty. It was obligatory on the part of the applicant to clear the goods within seven days of receiving the assessed buill of entry. Failing which it was obligatory on the part of the applicant to clear the same on payment of duty with interest. In these circumstances, the finding given by the Tribunal that the assessing officer was justified in rejecting the reconversion of the bill of entry under Section 46(5) of the Customs Act on the ground that such conversion would cause revenue loss is a finding of fact and the questions raised by the applicant cannot be said to be questions of law arising out of the order passed by the Tribunal.

9. Accordingly, we see no merit in the application filed by the importer and the same is hereby rejected with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)